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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,541	10/28/2003	Donald E. Burg	104-148	5460

7590 03/10/2004

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EXAMINER

PAPE, JOSEPH

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 03/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/695,541

**Applicant(s)**

BURG, DONALD E.

**Examiner**

Joseph D. Pape

**Art Unit**

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cover having "four" elements as set forth in claim 9 and the stop light affixed to the rearmost cover member in claim 17 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claims 10, 11 and 16-18 are objected to because of the following informalities: In claim 10, line 2, it is thought that "end" should be changed to --portion-- for consistency. In claims 16-18, it is thought that "stoplight" should be changed to --stop light--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 13-14, 23-24, and 26-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 13 and 14, "vehicle's aft portion elements" has no clear antecedent basis.

In claim 23, line 1, "elements" are inferentially recited which raises a question as to whether or not the features are positively recited.

Claims 26-28 have instances of lacking clear antecedent basis for the term "first tailgate" which results from incorrect dependency upon base claim 1. The claims have been treated based upon prior art as follows: Claim 26 depends from claim 25; claim 27 depends from claim 25; and claim 27 depends from claim 26.

***Specification***

5. The disclosure is objected to because of the following informalities: On page 8, line 12, it is thought that "36" should possibly be changed to --35--.

Appropriate correction is required.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-11, 13-17, 19-24, 31 and 35 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/673,948. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obviously directed to the same patentable invention and allowance thereof would be improper.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-15, 19-24, 29 and 35, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Martin et al.

Martin et al. disclose the claimed invention including the front wall of fixed section 24 being either closed with a fixed window as shown in Figure 3 or being provided with an opening for communication with the cab to form a continuation of the cab as shown in Figure 9. Martin et al. also includes rolling elements 78.

10. Claim 31 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Neubrand.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. in view of Chiu, Jr.

Martin et al. disclose the claimed invention except for the first cover element having a stop light affixed thereto.

Chiu, Jr. discloses a fixed cover element for a truck bed at the same height as the cab including a stop light 50 affixed thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the first cover element of Martin et al. with a stop light as taught by Chiu et al. for enhanced safe operation of the vehicle.

13. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. in view of Alexa.

Martin et al. disclose the claimed invention except for the rear cover element having a stop light affixed thereto.

Alexa discloses a cover element for a truck bed at the same height as the cab including a stop light 15 affixed to the rearmost portion thereof.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the rear cover element of Martin et al. with a stop light as taught by Alexa for enhanced safe operation of the vehicle.

14. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. in view of Harris.

Martin et al. disclose the claimed invention except for the rear tailgate having a stop light affixed thereto.

Harris discloses a tailgate for a truck bed including a stop light 29 affixed to the rearmost portion thereof.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the rear tailgate of Martin et al. with a stop light as taught by Harris for enhanced safe operation of the vehicle.

15. Claims 25 and 26, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. in view of Renke et al.

Martin et al. disclose the claimed invention except for a tailgate disposed between the cab and the rear portion of the vehicle that has a retractable window associated therewith.

Renke et al. disclose a tailgate disposed between the cab 16 and the rear portion 20 of the vehicle that has a retractable window 38 associated therewith.



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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vehicle of Martin et al. with a tailgate disposed between the cab and the rear portion of the vehicle that has a retractable window associated therewith as taught by Renke et al. for enhanced cargo carrying function when desired.

16. Claims 25, 27, and 28, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al.

Martin et al. disclose the claimed invention except for a tailgate disposed between the cab and the rear portion of the vehicle that can rotate rearwardly and fit into a recess in the floor of the vehicle.

Koto discloses tailgate 16 disposed between the cab and the rear portion of the vehicle that can rotate rearwardly and fit into a recess in the floor of the vehicle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vehicle of Martin et al. with a tailgate disposed between the cab and the rear portion of the vehicle that can rotate rearwardly and fit into a recess in the floor of the vehicle as taught by Renke et al. for enhanced function by providing additional seating capacity.

17. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. in view of Tolinski et al.

Martin et al. disclose the claimed invention except for the rear tailgate including a retractable window.

Tolinski et al. disclose a tailgate 22 for a vehicle having a retractable cover 16 for a rear portion thereof. The tailgate includes a retractable window 24 which interacts with the cover to close the rear of the vehicle when in a closed position and which can retract into the tailgate when in an open position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the rear tailgate of Martin et al. with a retractable window that selectively interacts with the rear cover member 28 instead of glass panel 32 when the cover is in a closed position as taught by Tolinski et al. in order to enhance the adjustable nature of the cover so that the cover can be quickly closed from the configuration shown in Figure 15 with the rear glass removed from the cover with the cover being engaged by the extended window associated with the rear tailgate.

18. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neubrand in view of Renke et al.

Neubrand discloses the claimed invention except for a tailgate disposed between the cab and the rear portion of the vehicle that has a retractable window associated therewith.

Renke et al. disclose a tailgate disposed between the cab 16 and the rear portion 20 of the vehicle that has a retractable window 38 associated therewith.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vehicle of Neubrand with a tailgate disposed between the cab and the rear portion of the vehicle that has a retractable window associated therewith as taught by Renke et al. for enhanced cargo carrying function when desired.

19. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neubrand in view of Tolinski et al.

Neubrand discloses the claimed invention except for the rear tailgate including a retractable window.

Tolinski et al. disclose a tailgate 22 for a vehicle having a retractable cover 16 for a rear portion thereof. The tailgate includes a retractable window 24 which interacts with the cover to close the rear of the vehicle when in a closed position and which can retract into the tailgate when in an open position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the rear tailgate of Neubrand with a retractable window that selectively interacts with the rear cover member 20 instead of glass panel 28 being fixed to the cover as taught by Tolinski et al. in order to enhance cargo carrying function when needed.

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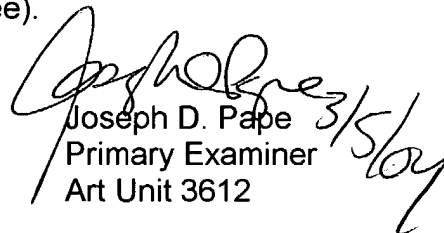
**Conclusion**

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references have many features that are similar to the current invention.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Pape whose telephone number is (703) 308-3426. The examiner can normally be reached on Tues.-Fri. (6:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joseph D. Pape  
Primary Examiner  
Art Unit 3612

Jdp

March 5, 2004